

CHRISTOPHER J. NEARY
cjneary@pacific.net

JENNIFER M. O'BRIEN
jennifer_m_obrien@yahoo.com

NEARY AND O'BRIEN

ATTORNEYS AT LAW

110 SOUTH MAIN STREET, SUITE C
WILLITS, CALIFORNIA 95490

FAX: (707) 459-3018
WWW.CJNEARY.COM

(707) 459-5551

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Jack Silver, Esq.
PO Box 5469
Santa Rosa, CA 95402-5469

Steven C. Mitchell, Esq.
37 Old Courthouse Square, 4th Flr.
Santa Rosa CA 95404
Philip M. Vannucci, Esq.

Re: California River Watch v. City of Willits
Northern District of California Case # CV 13 1395

Dear Jack and Steve:

Brooktrails attempted to intervene in the above-entitled lawsuit by motion which was denied without prejudice. I am attaching Judge Chen's comments opining that the City adequately represented the District's interests in the lawsuit, but holding open the possibility that intervention would be entertained if a settlement was reached which did not address the issues raised by Brooktrails in the Complaint in Intervention.

In today's edition there is a news report that a settlement has been approved by the City of Willits. I have not heard from either of you as to the terms of such settlement. A copy of Judge Chen's comments is attached in which he urged that the parties provide Brooktrails with a "penultimate draft."

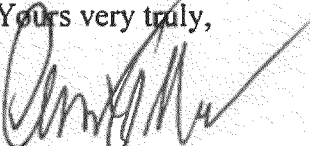
In preparing Dr. McEdwards for trial testimony in April and reviewing the flow information for 2013 acquired when deposing the City Engineer in March we learned that the month after River Watch served its sixty day letter that there was an 81,000,000 gallon mistake made by the plant operator in accounting for wastewater at the plant. The timing of this mistake remains troubling and needs to be explained further as to how it occurred so as to eliminate the

possibility of intentional deception. Irrespective of whether the reporting error was intentional or unintentional it is possible that the report prepared by the City's retained consultant GHD referred to by Steve Mitchell in September 2013 as explaining the unaccounted wastewater was prepared by the City's consultant, GHD, in reliance upon the 81 million gallon reporting error by the City and accordingly the report might be unreliable. If GHD relied upon different data than that reported by the City to the Regional Board other questions are raised.

We have also learned in April upon receipt and review of the City's 2013 self-monitoring reports that the predicted treatment levels have not been close to being achieved in the new plant's first year of operation even though the predicted treatment levels were offered as the justification for the Basin Plan Variance. We do not know if the proposed settlement recognizes or addresses this issue.

The purpose of this letter is to request a copy of the proposed settlement agreement approved by the City Council on June 11 so that the apparent settlement can be reviewed both in terms as to how the issues described in the proposed complaint in intervention filed in the proceeding, and the public interest as it relates to the apparent unpermitted discharge of millions of gallons of partially treated wastewater to the groundwater aquifer of Little Lake Valley.

Yours very truly,



Christopher J. Neary

CJN:cm

cc Denise Rose
Brooktrails Board of Directors
Matthias St. John

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1 possibility that there could be some unfairness structured that
2 would not be fair to you -- or at least give your client a
3 chance to voice its views relative to any consent decree --
4 proposed consent decree.

5 So I would advise the City that, before you go too far down
6 the road, you know, if you want to expedite things, you may
7 want to share a penultimate draft, or something.

8 MR. MITCHELL: Well, we'll deal with things as best
9 we can. It's a very difficult situation, with all of this --

10 THE COURT: I understand.

11 MR. MITCHELL: -- fraud lawsuits, and all of the
12 allegations that are being made; but I'm -- I hear that it's
13 being -- the motion's denied without prejudice. And I think --

14 THE COURT: Yeah.

15 MR. MITCHELL: -- we both hear that.

16 MR. NEARY: Your Honor, could I just make one further
17 request?

18 THE COURT: Yeah.

19 MR. NEARY: That if you deny the motion, to order the
20 City of Willits to provide Brooktrails with a copy of any
21 proposed consent decree. There's no -- I can't see of any
22 effective way of monitoring this case or -- or entry of a--

23 THE COURT: Well, okay. I will do this; that before
24 any -- when a consent decree is proposed for this Court's
25 approval, then notice should be given.

1 MR. MITCHELL: That's fine. And I mean -- I'm sorry,
2 but Mr. Neary and Mr. Silver, who represent River Watch, have
3 acknowledged to me that they are working in cahoots on this
4 matter. So to suggest that Mr. Neary isn't going to be advised
5 by River Watch is fanciful.

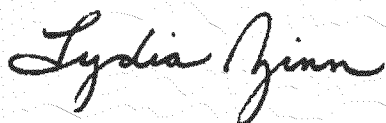
6 THE COURT: There's no -- I'll note that in the
7 minute order in this case.

8 MR. MITCHELL: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (At 1:38 p.m. the proceedings were adjourned.)

11 I certify that the foregoing is a correct transcript from the
12 record of proceedings in the above-entitled matter.

13 
14

15 November 18, 2013

16 Signature of Court Reporter/Transcriber Date
Lydia Zinn